

Plaintiffs' Exhibit 71

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UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF VIRGINIA
ALEXANDRIA DIVISION

UNITED STATES OF AMERICA, :
et al., :
Plaintiffs :
v. : No. 1:23-cv-00108
GOOGLE, LLC, :
Defendants. :

Tuesday, August 15, 2023

Video Deposition of ALLEN OWENS,
taken at the Law Offices of Paul, Weiss, Rifkind,
Wharton & Garrison LLP, 2001 K St NW, Washington,
DC, beginning at 9:37 a.m. Eastern Standard Time,
before Ryan K. Black, Registered Professional
Reporter, Certified Livenote Reporter and Notary
Public in and for the District of Columbia

25 Job No. CS6037511

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<p>1 -- admirals to whom you've reported while you've 2 been the director of marketing?</p> <p>3 A. Yes.</p> <p>4 Q. Who are those admirals?</p> <p>5 A. Admiral Velez. Yeah.</p> <p>6 Q. Beyond the Admirable -- Admiral -- 7 strike that.</p> <p>8 Is the Admiral -- does the Admiral sit 9 at the top of the Navy Recruiting Command?</p> <p>10 A. Yes.</p> <p>11 Q. Okay. Who is the Admiral's boss?</p> <p>12 A. That would be referred to as NETC, 13 N-E-T-C, which is the commander Naval Education 14 and Training Command.</p> <p>15 Q. I've read some documents that you've 16 produced entitled -- meaning the Navy has 17 produced -- entitled the Commander's Report. 18 Who's the commander referred to in those 19 documents?</p> <p>20 MR. MCBIRNEY: Objection; foundation.</p> <p>21 THE WITNESS: Yeah. I -- I would need 22 to see the documents just to make sure that I'm 23 -- that I give you an accurate answer.</p> <p>24 BY MS. GOODMAN:</p> <p>25 Q. Okay. What are your job</p>	<p>1 time you have been the deputy director or the 2 director that you served as the COR on the VMLYR 3 [sic] contract?</p> <p>4 MR. MCBIRNEY: Object to form.</p> <p>5 THE WITNESS: Yes.</p> <p>6 BY MS. GOODMAN:</p> <p>7 Q. Okay. Prior to March of 2020, who was 8 the COR, to you -- if you know, on the VMLYR 9 [sic] contract?</p> <p>10 A. Prior to 2020, it would have been the 11 outgoing deputy, Mr. John Byrd.</p> <p>12 Q. And did Mr. Byrd leave Navy Recruiting 13 Command in March of 2020?</p> <p>14 A. No.</p> <p>15 Q. Where did he go?</p> <p>16 A. He -- he retired.</p> <p>17 Q. So did he leave the Navy Recruiting 18 Command in March of 2020 when he retired?</p> <p>19 A. I don't believe so. I believe it was 20 earlier than that.</p> <p>21 Q. I see.</p> <p>22 Do you use your personal email for work 23 purposes?</p> <p>24 A. No.</p> <p>25 Q. Have you ever used your personal email</p>
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<p>1 responsibilities as the director of marketing for 2 the Navy Recruiting Command?</p> <p>3 A. Sure. My overall responsibilities as 4 director of marketing is to set the strategy for 5 our marketing and to ensure that -- that the 6 marketing is effective at producing leads and 7 increasing Navy awareness.</p> <p>8 Q. When you say "producing leads," what do 9 you mean?</p> <p>10 A. Producing actionable lists of people 11 with their contact information who are both 12 qualified and interested to join the Navy.</p> <p>13 Q. What responsibilities, if any, do you 14 have as director of marketing with respect to 15 purchasing media?</p> <p>16 A. Sure. So setting the strategy and 17 approving the tactics employed to purchase media.</p> <p>18 Q. When you say "tactics employed," what do 19 you mean?</p> <p>20 A. I mean to approve recommended media 21 plans for execution.</p> <p>22 Q. Are you the COR on the VMLYR [sic] 23 contract in your role as director of marketing?</p> <p>24 A. Yes.</p> <p>25 Q. Okay. So is it accurate that the entire</p>	<p>1 for work purposes?</p> <p>2 A. The only time I can recollect using 3 any personal email was if there are videos that 4 wouldn't play on the NMCI, so, for review, I may 5 have sent them to my personal email so that I 6 could view them because of connectivity issues.</p> <p>7 Q. What is the "NMCI"?</p> <p>8 A. I'm sorry, the Navy Marine Corps 9 Internet system.</p> <p>10 Q. Is that, like, a special intranet within 11 the Navy?</p> <p>12 A. Yes.</p> <p>13 Q. Okay. And is that the only internet 14 system that you can use at -- in your job at the 15 Navy?</p> <p>16 A. Yes.</p> <p>17 Q. And using your personal email so that 18 you could view videos because of connectivity 19 issues, do you have any other recollection of 20 using your personal email for work purposes?</p> <p>21 A. Not that I recall.</p> <p>22 Q. Okay.</p> <p>23 MR. MCBIRNEY: Martha, if we're going to 24 start going into documents, is now a good time 25 for a break?</p>

<p style="text-align: right;">Page 114</p> <p>1 those items, correct?</p> <p>2 MR. MCBIRNEY: Same objections.</p> <p>3 THE WITNESS: It provides a -- a</p> <p>4 breakdown of the cost for each of those under</p> <p>5 Branded Display, Paid Social and CPL Job Sites as</p> <p>6 well as Paid Search Keywords.</p> <p>7 BY MS. GOODMAN:</p> <p>8 Q. That's an estimate, correct?</p> <p>9 MR. MCBIRNEY: Same objections.</p> <p>10 THE WITNESS: I would say it would be</p> <p>11 fair to characterize it as a -- as an estimate.</p> <p>12 BY MS. GOODMAN:</p> <p>13 Q. Okay. And that's because your agency,</p> <p>14 Young & Rubicam as reflected in the second bullet</p> <p>15 under Item 3, is to negotiate and purchase</p> <p>16 digital media and, thus, you can't set the price</p> <p>17 at this time, correct?</p> <p>18 MR. MCBIRNEY: Same objections.</p> <p>19 THE WITNESS: Yeah. So it's my</p> <p>20 understanding that the specific price can't be</p> <p>21 set from the ad co, which is why it does say</p> <p>22 negotiate.</p> <p>23 BY MS. GOODMAN:</p> <p>24 Q. Are you aware of any task order entered</p> <p>25 into under the contract with -- I'll call it the</p>	<p style="text-align: right;">Page 116</p> <p>1 contracts or any task orders -- I believe it's</p> <p>2 over a dollar threshold of 5 million -- but I'm</p> <p>3 -- I'm -- it's a dollar threshold. Sitting here</p> <p>4 today I can't recollect exactly if it's 5</p> <p>5 million, but I think that's the threshold.</p> <p>6 BY MS. GOODMAN:</p> <p>7 Q. And so regardless of what the threshold</p> <p>8 is, understanding you're not current in your</p> <p>9 recollection of what it is, if it's under that</p> <p>10 threshold, is it therefore issued by the Navy</p> <p>11 Recruiting Command?</p> <p>12 A. Yes.</p> <p>13 MR. MCBIRNEY: Objection; foundation.</p> <p>14 BY MS. GOODMAN:</p> <p>15 Q. To your knowledge, why is it the</p> <p>16 case that a certain dollar threshold causes a</p> <p>17 different organization within the DoD to issue</p> <p>18 the task order?</p> <p>19 MR. MCBIRNEY: Objection. Calls for</p> <p>20 speculation.</p> <p>21 THE WITNESS: Yeah. I -- I don't know.</p> <p>22 BY MS. GOODMAN:</p> <p>23 Q. Okay. So after a task order is issued</p> <p>24 relative to placing media buys, what does VMLY&R</p> <p>25 do in order to perform under that task order?</p>
<p style="text-align: right;">Page 115</p> <p>1 master contract that we've talked about at the</p> <p>2 last session, are you aware of any task order</p> <p>3 issued under that contract that sets a price for</p> <p>4 specific digital media buy purchases?</p> <p>5 A. Can you please be more specific so I</p> <p>6 -- I can give you a precise answer?</p> <p>7 Q. I just want to know, sitting here today,</p> <p>8 your best recollection of whether you are aware</p> <p>9 of any task order that sets a price for digital</p> <p>10 media purchases?</p> <p>11 A. Sitting here today, to my best</p> <p>12 recollection, I'm not aware of that.</p> <p>13 Q. Okay. Okay. What is the Naval Supply</p> <p>14 Systems Command?</p> <p>15 A. Naval Supply Systems Command, NAVSUP, is</p> <p>16 the -- otherwise known as NAVSUP, is the command</p> <p>17 that oversees our fleet logistics center, the</p> <p>18 ones who do the contracting.</p> <p>19 Q. And so under what circumstances does the</p> <p>20 Naval Supply Systems Command issue task orders</p> <p>21 under the Young & Rubicam master contract?</p> <p>22 MR. MCBIRNEY: Objection; foundation.</p> <p>23 THE WITNESS: So the Fleet Logistics</p> <p>24 Center would issue -- issues this contract.</p> <p>25 And it's my understanding they also issue the</p>	<p style="text-align: right;">Page 117</p> <p>1 A. So once a task order has been issued,</p> <p>2 VMLY&R will produce a recommended plan which</p> <p>3 includes specific tactics to accomplish the</p> <p>4 strategy that is being employed with that plan.</p> <p>5 Q. And when you say, "specific tactics,"</p> <p>6 can you give some examples of what you're</p> <p>7 referring to?</p> <p>8 A. Sure. They may recommend that we spend</p> <p>9 a certain dollar amount with Hulu or YouTube TV,</p> <p>10 or you name the business.</p> <p>11 Q. And then what do you do after receiving</p> <p>12 a recommended plan that VMLY&R produces under a</p> <p>13 task order?</p> <p>14 A. So I review the recommended plan, look</p> <p>15 at the estimated costs and estimated impressions</p> <p>16 that they will give to get an idea of the CPMs,</p> <p>17 and then make a determination to either approve</p> <p>18 the plan or have them make edits.</p> <p>19 Q. Okay. What kind of edits do you</p> <p>20 routinely ask VMLY&R to make?</p> <p>21 MR. MCBIRNEY: Object to the form of the</p> <p>22 question.</p> <p>23 THE WITNESS: I wouldn't say there</p> <p>24 are -- there's any specific type of edit that is</p> <p>25 routine, but edits could be anything from not</p>

30 (Pages 114 - 117)

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<p>1 placing ads with using -- utilizing a specific 2 partner or considering alternate -- alternate 3 spends. But there's nothing -- there's nothing 4 routine or specific.</p> <p>5 BY MS. GOODMAN:</p> <p>6 Q. Okay. Is it often the case that you 7 approve their recommended plan without edit?</p> <p>8 MR. MCBIRNEY: Objection; vague.</p> <p>9 THE WITNESS: Yeah. I can't recall 10 the -- the number of edits that I would issue to them.</p> <p>12 BY MS. GOODMAN:</p> <p>13 Q. Do you -- have you ever approved a 14 recommended plan without making an edit?</p> <p>15 A. Sitting here today, I -- I don't recall.</p> <p>16 Q. One way or another?</p> <p>17 A. Right.</p> <p>18 Q. How does VMLY&R go about purchasing ads?</p> <p>19 MR. MCBIRNEY: Objection; foundation. 20 And vague.</p> <p>21 THE WITNESS: Yeah. So we have the 22 contract with VMLY&R. And we set the strategy 23 and have them come to us with those recommended 24 tactics. But we don't tell them how to go and 25 purchase it, so ...</p>	<p>1 BY MS. GOODMAN: 2 Q. Okay. So you don't know anything about 3 any contractual relationships between VMLY&R and 4 Wavemaker. Is that accurate?</p> <p>5 A. I don't know the exact legal business 6 relationship between the two.</p> <p>7 Q. Do you have any understanding about the 8 contractual relationship between the two?</p> <p>9 MR. MCBIRNEY: Objection. Assumes 10 facts.</p> <p>11 THE WITNESS: Yeah. As stated, I do 12 not know the specific legal business definition 13 or arrangement between the two.</p> <p>14 BY MS. GOODMAN:</p> <p>15 Q. Okay. Do you have any understanding 16 about any relationship between VMLY&R and 17 Wavemaker with respect to digital ad purchases 18 on behalf of the Navy?</p> <p>19 A. Yeah. Sitting here today, I -- I don't 20 know that -- that specific legal business 21 arrangement.</p> <p>22 Q. Okay. Do you know if any contract 23 exists between VMLY&R and Wavemaker?</p> <p>24 A. Sitting here today, I don't have the 25 specific business contractual relationship</p>
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<p>1 BY MS. GOODMAN:</p> <p>2 Q. So sitting here today, do you know how 3 VMLY&R goes about purchasing ads?</p> <p>4 MR. MCBIRNEY: Objection; vague.</p> <p>5 THE WITNESS: Sitting here today, I 6 don't know their exact process of purchasing the 7 ads on our behalf.</p> <p>8 BY MS. GOODMAN:</p> <p>9 Q. Okay. How about at a more general 10 level? Rather than their exact process, do you 11 know generally how they go about purchasing ads?</p> <p>12 A. Sitting here today, it's my testimony 13 that I am not aware of their process to go and 14 purchase the ads.</p> <p>15 Q. Okay. What does Wavemaker do?</p> <p>16 A. It's my understanding that Wavemaker is 17 the arm of VMLY&R which purchases the ads.</p> <p>18 Q. Okay. So do you have an understanding 19 with respect to Wavemaker and VMLY&R with respect 20 to purchasing of ads?</p> <p>21 MR. MCBIRNEY: Object to the form of the 22 question.</p> <p>23 THE WITNESS: So our contract is with 24 VMLY&R, and I'm not privy to their exact business 25 relationships with -- with their companies.</p>	<p>1 between the two.</p> <p>2 Q. So you don't know if any contract 3 exists; is that correct?</p> <p>4 MR. MCBIRNEY: Objection. Asked and 5 answered.</p> <p>6 THE WITNESS: Sitting here today, I am 7 unaware of the specific, exact legal business 8 arrangement between those two entities.</p> <p>9 BY MS. GOODMAN:</p> <p>10 Q. Okay. I understand you don't know 11 the exact legal business arrangement between 12 Wavemaker and VMLY&R.</p> <p>13 A. Mm-hmm.</p> <p>14 Q. I want to know whether you have any 15 knowledge or awareness of any contract between 16 the two?</p> <p>17 MR. MCBIRNEY: Objection. Asked and 18 answered.</p> <p>19 THE WITNESS: I'm aware of our contract 20 with VMLY&R, and I'm unaware of the specific 21 arrangement between them and Wavemaker.</p> <p>22 BY MS. GOODMAN:</p> <p>23 Q. Have you ever seen a contract between 24 VMLY&R and Wavemaker?</p> <p>25 MR. MCBIRNEY: Objection. Asked and</p>

<p style="text-align: right;">Page 142</p> <p>1 THE WITNESS: To the best of my 2 knowledge, the only programmatic partner that the 3 Navy purchases marketing and advertising through 4 via our contract with VMLY&R is the Trade Desk. 5 BY MS. GOODMAN: 6 Q. Okay. So, to be clear, has VMLY&R, to 7 your knowledge, ever used Google's product DV360 8 to facilitate the placement of programmatic 9 display ads on behalf of the Navy? 10 MR. MCBIRNEY: Objection; foundation. 11 THE WITNESS: So I recall that 12 Google term, the SV or DV360; however, it's my 13 understanding that the only programmatic buying 14 that has been done on our behalf -- on the Navy's 15 behalf is with the Trade Desk. 16 BY MS. GOODMAN: 17 Q. Okay. And when you say "programmatic 18 buying," I want to drill down a little bit more 19 specifically to programmatic display advertising. 20 So not programmatic connected TV, not 21 programmatic online video, but programmatic 22 display ads, okay? And so is the Trade Desk the 23 only provider that has been used by VMLY&R to 24 purchase programmatic display ads on behalf of 25 the Navy?</p>	<p style="text-align: right;">Page 144</p> <p>1 is the only programmatic buyer that the Navy has 2 utilized for programmatic marketing and 3 advertising. 4 Q. Okay. 5 A. That's my understanding. 6 Q. Are you aware of any Google products 7 or services that VMLY&R could use to place 8 programmatic ads on the internet on behalf of the 9 Navy? 10 A. Can you repeat the question? 11 Q. Are you aware of any Google product 12 or service that could be used by VMLY&R to 13 purchase digital media on behalf of the Navy 14 -- programmatic digital media on behalf of the 15 Navy? 16 A. The Navy utilizes VMLY&R to execute 17 purchases on our behalf, but we do not direct 18 them how to do so. 19 Q. And so you don't direct them any 20 particular vendor to use. Is that accurate? 21 MR. MCBIRNEY: Object to form. 22 THE WITNESS: We -- the Navy does not 23 direct VMLY&R to use any particular ad-buying 24 method. We review their recommended plan and 25 then approve it, or -- or suggest edits, for</p>
<p style="text-align: right;">Page 143</p> <p>1 MR. MCBIRNEY: Objection. Object to the 2 form. 3 THE WITNESS: To the best of my 4 knowledge, the only programmatic buying that has 5 been done on behalf of the Navy has been with 6 -- I'm drawing a blank now on the -- the Trade 7 Desk. Sorry. 8 BY MS. GOODMAN: 9 Q. And within your answer, are you 10 including programmatic display advertising 11 buying? 12 A. I am stating programmatic buying 13 overall. 14 Q. Okay. So are you aware of any provider, 15 other than the Trade Desk, that has been used by 16 VMLY&R to purchase programmatic display ads on 17 behalf of the Navy? 18 MR. MCBIRNEY: Object to the form. 19 THE WITNESS: My understanding is that 20 any programmatic buying that has been done on 21 behalf of the Navy has been with the Trade Desk. 22 BY MS. GOODMAN: 23 Q. And only in the Trade Desk, to your 24 knowledge, correct? 25 A. My understanding is that the Trade Desk</p>	<p style="text-align: right;">Page 145</p> <p>1 purchasing our -- our media on our behalf. 2 BY MS. GOODMAN: 3 Q. So in the course of your work as the 4 director of marketing for the Navy Recruiting 5 Command, are you aware of any Google product or 6 service that VMLY&R could use in order to place 7 programmatic display ads on behalf of the Navy? 8 MR. MCBIRNEY: Object. Asked and 9 answered, and same to form. 10 THE WITNESS: Not that I can recall. 11 BY MS. GOODMAN: 12 Q. Okay. So do you know what DV360 is? 13 A. Sitting here today, I do not. 14 Q. Okay. Have you ever come across the 15 term DV360 in the course of your work as the 16 COR supervising the VMLY&R contract? 17 A. As stated earlier, that phrase -- I 18 recollect that phrase, but I don't recollect in 19 what context. 20 Q. And have you had any conversations with 21 anybody at VMLY&R about whether to use DV360? 22 MR. MCBIRNEY: Object to form, and asked 23 and answered. 24 THE WITNESS: Not to my recollection. 25 MS. GOODMAN: Mm-hmm.</p>

<p style="text-align: right;">Page 146</p> <p>1 Can I have this one, please?</p> <p>2 (Exhibit No. 57, a document Bates</p> <p>3 Numbered NAVY-ADS19114 through NAVY-ADS19182, was</p> <p>4 introduced.)</p> <p>5 BY MS. GOODMAN:</p> <p>6 Q. I'm handing you Exhibit 57,</p> <p>7 NAVY-ADS19114 through 19182.</p> <p>8 And this is, again, a somewhat lengthy</p> <p>9 deck, so we'll start at the cover page, which is</p> <p>10 an email from Petergarlinghouse@wmglobal.com to</p> <p>11 yourself and others on May 24th, 2021, correct?</p> <p>12 A. That what this would appear to be</p> <p>13 Q. Okay. And it's attaching a Navy</p> <p>14 Tactical Reco June-July Final presented 5-21 --</p> <p>15 5-24-21, correct?</p> <p>16 A. That's what this email seems to</p> <p>17 indicate, yes.</p> <p>18 Q. Okay. Who's Peter Garlinghouse?</p> <p>19 A. Peter Garlinghouse works for Wavemaker.</p> <p>20 I believe he works under the direction of Sandra</p> <p>21 Mouio.</p> <p>22 Q. Under the direction of who? I'm sorry.</p> <p>23 I didn't catch that.</p> <p>24 A. Sandra Mouio.</p> <p>25 Q. Mouio. Okay.</p>	<p style="text-align: right;">Page 148</p> <p>1 A. Let me just take a quick look at the</p> <p>2 document --</p> <p>3 Q. Sure.</p> <p>4 A. -- just to make sure.</p> <p>5 (Witness reviews document.)</p> <p>6 Okay. Yes, this is the type of document</p> <p>7 that I was referencing earlier.</p> <p>8 Q. Meaning a recommendation that you would</p> <p>9 review and approve or review and propose edits,</p> <p>10 correct?</p> <p>11 A. Yes. That's correct.</p> <p>12 Q. Okay. So let's turn to Page 122, ending</p> <p>13 in 122.</p> <p>14 A. You're testing out my eyes today.</p> <p>15 Q. Yeah. It's hard to see on this one.</p> <p>16 It's Page 8 of the deck.</p> <p>17 A. Okay.</p> <p>18 Q. Under Display Video, are these the</p> <p>19 entities used by VMLY&R at this time with respect</p> <p>20 to display and video ads?</p> <p>21 MR. MCBIRNEY: Objection; vague.</p> <p>22 THE WITNESS: Let me review that</p> <p>23 section.</p> <p>24 (Reviews document.)</p> <p>25 It would appear on 9122 that those logos</p>
<p style="text-align: right;">Page 147</p> <p>1 And what is a tact -- what is a tactical</p> <p>2 reco document, like the kind attached here?</p> <p>3 What's its purpose?</p> <p>4 A. Sure. So as mentioned earlier, the</p> <p>5 Navy issues a task order, and in concert with the</p> <p>6 overall strategy that's to be employed for that</p> <p>7 year, the tactical reco is a response to that</p> <p>8 where they propose what buys to execute for that</p> <p>9 task order for Navy's approval.</p> <p>10 Q. Okay. And so this -- are there multiple</p> <p>11 tactical reco's issued with respect to a single</p> <p>12 task order?</p> <p>13 A. Typically, there would only be one, but</p> <p>14 there could be an instance where there might be</p> <p>15 more than one, depending on what the spend was</p> <p>16 and what the recommendations were.</p> <p>17 Q. Okay. And so earlier we were talking</p> <p>18 about how you review the recommendations and</p> <p>19 maybe make edits to it or otherwise improve it.</p> <p>20 Do you recall that testimony?</p> <p>21 A. Yes.</p> <p>22 Q. Okay. And so is this the kind of</p> <p>23 document and recommendation that you would review</p> <p>24 and provide input on consistent with what we</p> <p>25 test -- talked about earlier?</p>	<p style="text-align: right;">Page 149</p> <p>1 at the bottom are a summary of the display video</p> <p>2 listed out in the rest of the document.</p> <p>3 BY MS. GOODMAN:</p> <p>4 Q. Okay. And under the -- on Page 19122</p> <p>5 under Display Video, where the logos are listed,</p> <p>6 the only one to your knowledge that is a Google</p> <p>7 product or service is YouTube. Is that accurate?</p> <p>8 A. Of all the logos shown at the left-hand</p> <p>9 side of Page 9122, YouTube is the only one, to my</p> <p>10 knowledge, that is a Google product.</p> <p>11 Q. Okay. And let's go to Page 19129.</p> <p>12 Under Partner Overview, can you read the first</p> <p>13 sentence?</p> <p>14 A. Just read it verbatim to you?</p> <p>15 Q. Yes, please.</p> <p>16 A. On Page 9129 the first sentence under</p> <p>17 Partner Overview states, "The Trade Desk is our</p> <p>18 preferred programmatic partner, with dynamic</p> <p>19 targeting capabilities and massive reach."</p> <p>20 Q. To your knowledge, is that an accurate</p> <p>21 statement?</p> <p>22 A. Sitting here today, I have no reason to</p> <p>23 believe that is that it's not.</p> <p>24 Q. Okay. From your point of view, was the</p> <p>25 Trade Desk the Navy's preferred programmatic</p>

<p style="text-align: right;">Page 186</p> <p>1 MR. MCBIRNEY: Object to the form.</p> <p>2 THE WITNESS: You're asking me a</p> <p>3 question, though, that would have been outside</p> <p>4 of my wheelhouse or purview during that time.</p> <p>5 So the only one I can say with any certainty</p> <p>6 would have been based on the email that you're</p> <p>7 showing me here that in 2017 the Trade Desk was</p> <p>8 at least being used.</p> <p>9 BY MS. GOODMAN:</p> <p>10 Q. Okay. Setting aside from this document,</p> <p>11 just back to the Trade Desk generally, do you</p> <p>12 know what ad exchanges, if any, they used to</p> <p>13 place programmatic advertising on behalf of the</p> <p>14 Navy?</p> <p>15 MR. MCBIRNEY: Object to form.</p> <p>16 THE WITNESS: So we contract with VMLY&R 16</p> <p>17 to do those buys on our behalf, so I don't have</p> <p>18 any specific knowledge of what tools they would</p> <p>19 have used to do that.</p> <p>20 BY MS. GOODMAN:</p> <p>21 Q. And it's accurate that you don't know</p> <p>22 what ad exchanges they used; is that correct?</p> <p>23 A. Sitting here today, I don't know what ad</p> <p>24 exchanges they would have used.</p> <p>25 MS. GOODMAN: Can I have 14?</p>	<p style="text-align: right;">Page 188</p> <p>1 on in the December 2022 time period?</p> <p>2 A. Sure. My recollection is the</p> <p>3 Optimization Group Project referenced here was a</p> <p>4 project where we had an outside company take our</p> <p>5 data and then make projections on the amount of</p> <p>6 funding that would be needed in market to have</p> <p>7 the desired impact. It's, basically, an outside</p> <p>8 analysis of our data.</p> <p>9 Q. What outside company was used?</p> <p>10 A. I believe their name was Optimization</p> <p>11 Group.</p> <p>12 Q. Did you ever work with anybody at</p> <p>13 Optimization Group on that project?</p> <p>14 A. Only in providing them the information</p> <p>15 for them to conduct their analysis.</p> <p>16 Q. So other than this email that we're</p> <p>17 looking at, can you recall any other information</p> <p>18 that you provided them to conduct their analysis?</p> <p>19 A. I can't recall all the information that</p> <p>20 was shared with them, but we shared with them our</p> <p>21 data to provide the analysis.</p> <p>22 Q. And when you say your data, what data</p> <p>23 are you referring to?</p> <p>24 A. It would have been data from the sources</p> <p>25 indicated on this email, so things like the Data</p>
<p style="text-align: right;">Page 187</p> <p>1 (Exhibit No. 60, a document Bates</p> <p>2 Numbered NAVY-ADS28530 through NAVY-ADS28531, was</p> <p>3 introduced.)</p> <p>4 BY MS. GOODMAN:</p> <p>5 Q. I'm handing you Exhibit 60,</p> <p>6 NAVY-ADS28530 through 28531.</p> <p>7 This is a two-page email exchange on</p> <p>8 which you are copied from December of 2022. Is</p> <p>9 that accurate?</p> <p>10 A. That is what this appears to be.</p> <p>11 Q. Okay. The subject is "ADV ROI Project</p> <p>12 Questions." What does that mean?</p> <p>13 A. My understanding would be that this is</p> <p>14 referencing Advertising Return on Investment</p> <p>15 Project.</p> <p>16 Q. Do you recall what Advertising Return on</p> <p>17 Investment Project was being worked on in the</p> <p>18 December 2022 time period?</p> <p>19 A. Yeah. If you would give me a moment to</p> <p>20 just review this and see if it refreshes.</p> <p>21 (Reviews document.)</p> <p>22 Okay. I'm sorry. Can you repeat the</p> <p>23 question?</p> <p>24 Q. What return on advertising -- Return on</p> <p>25 Investment Advertising Project was being worked</p>	<p style="text-align: right;">Page 189</p> <p>1 Czar Bible, analytics assessments. I don't have</p> <p>2 a total encompassing list.</p> <p>3 Q. Are you say "analytics assessments,"</p> <p>4 what do you mean?</p> <p>5 A. Those end-of-month reports.</p> <p>6 Q. So other than the end-of-month reports</p> <p>7 and the Data Czar Bible, can you think of any</p> <p>8 other data you provided to the Optimization</p> <p>9 Group?</p> <p>10 A. Sitting here today, I cannot.</p> <p>11 Q. Okay. Do you know who at the</p> <p>12 Optimization Group conducted this project?</p> <p>13 A. I don't recall the name sitting here</p> <p>14 today.</p> <p>15 Q. Okay. Who is Scott Milliet?</p> <p>16 A. So Scott Milliet was operations officer</p> <p>17 who took over, after I retired, as operations</p> <p>18 officer.</p> <p>19 Q. Does he report to you?</p> <p>20 A. He did report to me prior to retiring.</p> <p>21 He's retired.</p> <p>22 Q. I see. When did he retire?</p> <p>23 A. It's this summer. I don't remember the</p> <p>24 exact date.</p> <p>25 Q. At the bottom of -- on the back of the</p>

<p style="text-align: right;">Page 190</p> <p>1 page it says, Mr. and -- in Mr. Milliet's email 2 he says, "this is not a Washington tasker." Do 3 you see that?</p> <p>4 A. Yes.</p> <p>5 Q. What does that mean?</p> <p>6 A. So often we may get a very quick turn 7 request from Washington for data, et cetera, 8 necessitating a quick turn. So I think this is 9 just indicating that that's not one of those.</p> <p>10 Q. Okay. So then we see Ms. Fisch respond 11 to Mr. Milliet's email two days later -- and 12 please remind me what does Ms. Fisch do with 13 respect to the Navy and the VMLY&R contract?</p> <p>14 A. Sure. As her signature line indicates, 15 she's group director for client engagement. So 16 she engages with us on a near day-to-day basis 17 for any ongoing work.</p> <p>18 Q. Okay. And so three questions down 19 she's answering the question, "How are recruiting 20 results actually tracked," dot dot dot. Do you 21 see that?</p> <p>22 A. Yes.</p> <p>23 Q. Okay. And she writes that, "Yet, due 24 to the nature of digital marketing channels, 25 optimizations and other advertising strategy</p>	<p style="text-align: right;">Page 192</p> <p>1 Q. Okay. And can change -- based on 2 your experience in this role as the director of 3 marketing, can changes to advertising strategy be 4 made by shifting money from video display -- from 5 video ads on YouTube to display ads on the Trade 6 Desk, for example?</p> <p>7 MR. MCBIRNEY: Objection; foundation. 8 Calls for speculation.</p> <p>9 THE WITNESS: I would consider that a 10 change in tactics, not strategy. But -- but my 11 understanding is that, yes, changes could be made 12 if we found that a channel was no longer 13 delivering.</p> <p>14 BY MS. GOODMAN:</p> <p>15 Q. And the channels -- when you say 16 "channels," are you consider YouTube -- video ads 17 on YouTube and display ads via the Trade Desk to 18 be two different channels?</p> <p>19 A. I'm applying that statement to any 20 digital marketing and advertising data.</p> <p>21 Q. Okay. And do you recall ever switching 22 money or moving money from one channel to another 23 based on realtime performance?</p> <p>24 A. Sitting here today, I don't recall that.</p> <p>25 Q. Mm-hmm. And is that because you leave</p>
<p style="text-align: right;">Page 191</p> <p>1 adjustments are made in realtime and are 2 optimized based on key KPIs, such as cost per 3 lead, RFI form completions and Q&I lead trends." 4 What do you understand that to mean?</p> <p>5 MR. MCBIRNEY: Objection; foundation.</p> <p>6 THE WITNESS: Yeah. I wouldn't feel 7 comfortable in characterizing her comments from 8 -- from last year. I'm not sure exactly what she 9 was getting at with that statement.</p> <p>10 BY MS. GOODMAN:</p> <p>11 Q. Have you ever heard -- strike that. 12 I'm not asking you to tell me what she 13 meant. I'm asking you what do you understand 14 this sentence to mean?</p> <p>15 MR. MCBIRNEY: Same objection.</p> <p>16 THE WITNESS: Sure. My understanding 17 would be that, due to the nature of digital 18 advertising, that changes could be made quickly 19 if we see something's not working.</p> <p>20 BY MS. GOODMAN:</p> <p>21 Q. And is that understanding based on your 22 work as the director of marketing for the Navy 23 Recruiting Command?</p> <p>24 A. My understanding is, yeah, based on my 25 experience in this role, yes.</p>	<p style="text-align: right;">Page 193</p> <p>1 that optimization to VMLY&R to -- to perform?</p> <p>2 A. No. It's based on the question you 3 asked me.</p> <p>4 Q. Okay. Is it up to VMLY&R to make 5 any optimization adjustments as described in 6 Ms. Fisch's email here?</p> <p>7 MR. MCBIRNEY: Objection; vague.</p> <p>8 THE WITNESS: Again, I'm not certain 9 of the characterization of what she was talking 10 about here. My -- I would assume she might have 11 been talking about programmatic. But, again, I 12 can't -- I can't assign my thoughts of what she 13 was thinking at that time, so I can't answer that 14 question.</p> <p>15 BY MS. GOODMAN:</p> <p>16 Q. Okay. Setting aside what she's written 17 in this document, is it up to VMLY&R, as a 18 general matter as the ad agency for the Navy, to 19 direct any adjustments to campaign-spend across 20 digital media channels based on realtime 21 performance, or is that something that you do?</p> <p>22 MR. MCBIRNEY: Object to form.</p> <p>23 THE WITNESS: If VMLY&R were going to 24 make changes that deviated from the approved 25 plan, they would need to seek my approval.</p>

	Page 194	
1 BY MS. GOODMAN:		Page 196
2 Q. Okay. And what constitutes a change	1 your media agency, VMLY&R, to make such	
3 that deviates from the approved plan? Is it	2 adjustments?	
4 -- in other words, is it okay for VMLY&R to take	3 MR. MCBIRNEY: Objection. Asked and	
5 \$1 from YouTube and put it to the Trade Desk, if	4 answered.	
6 that dollar was allocated differently in the	5 THE WITNESS: It's my testimony that if	
7 approved plan?	6 the agency is going to make deviations from the	
8 MR. MCBIRNEY: Object to form.	7 approved plan that they should seek my approval.	
9 THE WITNESS: It's my testimony that if	8 BY MS. GOODMAN:	
10 they are to deviate from the approved flow in the	9 Q. And what about if the realtime	
11 plan that they would need to seek my approval.	10 adjustment they want to make does not deviate	
12 BY MS. GOODMAN:	11 from the approved plan, in such a circumstance	
13 Q. Okay. And have you ever not provided	12 you leave it up to your media agency, VMLY&R, to	
14 such approval?	13 make such an adjustment that does not deviate	
15 A. Yes.	14 from the approved plan?	
16 Q. Under what circumstances?	15 MR. MCBIRNEY: Object to form.	
17 A. There was a recommendation to come off	16 THE WITNESS: So can you give me an	
18 of Twitter during some contentious times, and I	17 example of -- I'm trying to wrap my head around	
19 disapproved that recommendation.	18 that question. Can you give me an example of the	
20 Q. Why did you disapprove of the	19 what-if scenario you're proposing?	
21 recommendation to come off of Twitter?	20 BY MS. GOODMAN:	
22 A. I was concerned about brand safety and	21 Q. If VMLY&R recommends spending up to	
23 that it would be potentially viewed as a protest,	22 \$50,000 on YouTube and up to \$50,000 on the Trade	
24 political or otherwise.	23 Desk and they determine that instead they should	
25 Q. Do you recall ever having discussions	24 spend \$30,000 on YouTube and take any of those	
	25 additional funds and spend them on the Trade Desk	
	Page 195	
1 with VMLY&R about allocating money between video	1 based on realtime campaign performance, are you	Page 197
2 via YouTube and the Trade Desk?	2 required to approve that?	
3 A. I'm sorry. Can you -- can you ask that	3 MR. MCBIRNEY: Objection. Calls for	
4 again?	4 speculation.	
5 Q. Do you ever recall having any	5 MS. GOODMAN: He asked for a	
6 discussions with VMLY&R about how to allocate	6 hypothetical, sir.	
7 money between video via YouTube and programmatic	7 MR. MCBIRNEY: He did ask for one.	
8 ads via the Trade Desk?	8 THE WITNESS: In the hypothetical you	
9 A. Sitting here today, I don't recall any	9 just suggested, that would be a deviation from	
10 such conversations.	10 the plan since the plan includes dollar amounts	
11 Q. Okay. To your knowledge, how are	11 to spend with each vendor. So they would need to	
12 advertising strategy adjustments made in realtime	12 seek my approval in that scenario.	
13 based on Key Performance Indicators?	13 BY MS. GOODMAN:	
14 A. I don't have that level of detailed	14 Q. Can you think of any circumstance where	
15 knowledge.	15 VMLY&R makes an adjustment in realtime based on	
16 Q. Is it important for to you understand	16 key KPIs that does not require your approval?	
17 how those strategy adjustments are made in	17 A. Sitting here today, I can think of no	
18 realtime as director of marketing for the Navy	18 situation like that.	
19 Recruiting Command?	19 Q. Okay. So can they make an adjustment in	
20 A. As the director of Navy Recruiting	20 realtime on all the ad spend on the Trade Desk	
21 Command, it's more important that I understand	21 between Online Video and Connected TV, for	
22 that those adjustments can be made, rather than	22 example?	
23 how they're made.	23 A. If the approved plan has a breakdown	
24 Q. Okay. Is it fair to say, then, sir,	24 between those two, they would need to stay to	
25 that, as a general matter, you leave it up to	25 the approved plan. And if they're going to	

50 (Pages 194 - 197)

<p style="text-align: right;">Page 278</p> <p>1 Q. Other than yourself, was there 2 any person who is not a lawyer who provided 3 information that assisted in responding to the 4 interrogatories that you verified?</p> <p>5 MR. MCBIRNEY: Objection to foundation.</p> <p>6 THE WITNESS: Yeah. As I -- as I 7 testified earlier, I did have members of my 8 team assist me in providing my response to the 9 interrogatories.</p> <p>10 BY MS. GOODMAN:</p> <p>11 Q. Okay. Anybody outside of members of 12 your team assist in providing information to help 13 in res -- responding to the interrogatories?</p> <p>14 MR. MCBIRNEY: Same objection.</p> <p>15 THE WITNESS: Not that I recall.</p> <p>16 BY MS. GOODMAN:</p> <p>17 Q. Anybody at Wavemaker provide information 18 that assisted in responding to these 19 interrogatories?</p> <p>20 A. Not that I recall.</p> <p>21 Q. Same question as to VMLY&R.</p> <p>22 A. Not that I recall.</p> <p>23 Q. Did Mr. Edmondson provide any 24 information that was -- that assisted in 25 responding to the interrogatories that you</p>	<p style="text-align: right;">Page 280</p> <p>1 C E R T I F I C A T E</p> <p>2</p> <p>3 I do hereby certify that I am a Notary 4 Public in good standing, that the aforesaid 5 testimony was taken before me, pursuant to 6 notice, at the time and place indicated; that 7 said deponent was by me duly sworn to tell the 8 truth, the whole truth, and nothing but the 9 truth; that the testimony of said deponent was 10 correctly recorded in machine shorthand by me and 11 thereafter transcribed under my supervision with 12 computer-aided transcription; that the deposition 13 is a true and correct record of the testimony 14 given by the witness; and that I am neither of 15 counsel nor kin to any party in said action, nor 16 interested in the outcome thereof.</p> <p>17</p> <p>18 WITNESS my hand and official seal this 19 17th day of  20</p> <p>21 Notary Public</p> <p>22</p> <p>23</p> <p>24</p> <p>25</p>
<p style="text-align: right;">Page 279</p> <p>1 verified?</p> <p>2 A. I would consider him to be covered under 3 the question of VMLY&R, so not that I recall.</p> <p>4 Q. Same question as to Sandra Mouio?</p> <p>5 A. And same response. I would consider her 6 to be part of the Wavemaker entity, so not that I 7 recall.</p> <p>8 MR. MCBIRNEY: Can I get a check on the 9 time?</p> <p>10 THE VIDEOGRAPHER: 7:02.</p> <p>11 MR. MCBIRNEY: I guess that's time.</p> <p>12 MS. GOODMAN: Thank you for your time, 13 Mr. Owens.</p> <p>14 THE VIDEOGRAPHER: Off the record, 15 Counsel?</p> <p>16 MS. GOODMAN: Yes.</p> <p>17 MR. MCBIRNEY: Off the record.</p> <p>18 THE VIDEOGRAPHER: The time is 7:03 p.m. 19 We're off the record.</p> <p>20 (Deposition concluded -- 7:02 p.m.)</p> <p>21</p> <p>22</p> <p>23</p> <p>24</p> <p>25</p>	<p style="text-align: right;">Page 281</p> <p>1 Jimmy McBirney, Esq. 2 jimmy.mcbirney@usdoj.gov 3 August 17, 2023 4 RE: United States, Et Al v. Google, LLC 5 8/15/2023, Allen Owens (#6037511) 6 The above-referenced transcript is available for 7 review. 8 Within the applicable timeframe, the witness should 9 read the testimony to verify its accuracy. If there are 10 any changes, the witness should note those with the 11 reason, on the attached Errata Sheet. 12 The witness should sign the Acknowledgment of 13 Deponent and Errata and return to the deposing attorney. 14 Copies should be sent to all counsel, and to Veritext at 15 erratas-cs@veritext.com 16 17 Return completed errata within 30 days from 18 receipt of testimony. 19 If the witness fails to do so within the time 20 allotted, the transcript may be used as if signed. 21 22 Yours, 23 Veritext Legal Solutions 24 25</p>

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1 United States, Et Al v. Google, LLC

2 Allen Owens (#6037511)

ERRATA SHEET

PAGE 51 LINE 8 CHANGE "I WAS EMPLOYED AS A
CONTRACTOR FOR APPROXIMATELY SIX MONTHS IN ANALYTICS DEPARTMENT

6 REASON OMISSION

7 PAGE LINE CHANGE

REASON

PAGE LINE CHANGE

REASON

PAGE LINE CHANGE

14 | Page

REASON

16 PAGE 1 LINE CHANGE

18 REASON

PAGE LINE CHANGE

REASON

22 | Page

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1 United States, Et Al v. Google, LLC

2 Allen Owens (#6037511)

3 E R R A T A S H E E T

4 PAGE 107 LINE 9,10 CHANGE "our applied win" to
5 "are applied when"

6 REASON ERROR

7 PAGE 114 LINE 21 CHANGE "ad co" to "get go"

8 _____

9 REASON ERROR

10 PAGE 243 LINE 18 CHANGE "WAW" to "WAWF"

11 _____

12 REASON ERROR

13 PAGE _____ LINE _____ CHANGE _____

14 _____

15 REASON _____

16 PAGE _____ LINE _____ CHANGE _____

17 _____

18 REASON _____

19 PAGE _____ LINE _____ CHANGE _____

20 _____

21 REASON _____

22 _____

23 Allen Owens

15 SEP 2023

Date

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1 United States, Et Al v. Google, LLC

2 Allen Owens (#6037511)

3 ACKNOWLEDGEMENT OF DEPONENT

4 I, Allen Owens, do hereby declare that I
5 have read the foregoing transcript, I have made any
6 corrections, additions, or changes I deemed necessary as
7 noted above to be appended hereto, and that the same is
8 a true, correct and complete transcript of the testimony
9 given by me.

10

11



15 SEP 2023

12

Allen Owens

Date

13

*If notary is required

14

SUBSCRIBED AND SWORN TO BEFORE ME THIS

15

_____ DAY OF _____, 20 ____.

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NOTARY PUBLIC

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<p style="text-align: right;">Page 282</p> <p>1 United States, Et Al v. Google, LLC 2 Allen Owens (#6037511) 3 E R R A T A S H E E T 4 PAGE ____ LINE ____ CHANGE _____ 5 _____ 6 REASON _____ 7 PAGE ____ LINE ____ CHANGE _____ 8 _____ 9 REASON _____ 10 PAGE ____ LINE ____ CHANGE _____ 11 _____ 12 REASON _____ 13 PAGE ____ LINE ____ CHANGE _____ 14 _____ 15 REASON _____ 16 PAGE ____ LINE ____ CHANGE _____ 17 _____ 18 REASON _____ 19 PAGE ____ LINE ____ CHANGE _____ 20 _____ 21 REASON _____ 22 _____ 23 _____ 24 Allen Owens Date 25</p>	<p style="text-align: right;">Page 283</p> <p>1 United States, Et Al v. Google, LLC 2 Allen Owens (#6037511) 3 ACKNOWLEDGEMENT OF DEPONENT 4 I, Allen Owens, do hereby declare that I 5 have read the foregoing transcript, I have made any 6 corrections, additions, or changes I deemed necessary as 7 noted above to be appended hereto, and that the same is 8 a true, correct and complete transcript of the testimony 9 given by me. 10 _____ 11 _____ 12 Allen Owens Date 13 *If notary is required 14 SUBSCRIBED AND SWORN TO BEFORE ME THIS 15 _____ DAY OF _____, 20___. 16 _____ 17 _____ 18 _____ 19 NOTARY PUBLIC 20 _____ 21 _____ 22 _____ 23 _____ 24 _____ 25 _____</p>
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